

**California Code of Regulations
Adopted Text**

TEXT OF ADOPTED REGULATIONS

Underline text indicates “to be adopted” and ~~strikethrough~~, “to be deleted” regulatory text. In some cases, strikeouts may be difficult to discern because they overlie horizontal lines in either a letter or number. Instructions to the printer are denoted in bracketed italics: *[italics]*.

Title 2. Administration

Division 2. Financial Operations

Chapter 3. Department of General Services

Subchapter 10.5. Disabled Veteran Business Enterprise Participation

Goal Program for State Contracts

Article 1. General Provisions

Section 1896.60 is amended to read:

§ 1896.60. Purpose of Subchapter.

The purpose of this subchapter is to set forth the rules for participation in the Disabled Veteran Business Enterprise (DVBE) program; and the rules, roles, responsibilities and rights of businesses and the state as they pertain to DVBE participation goals and certification.

Note: Authority cited: Sections 14600, ~~and 14615,~~ and 14839, Government Code; Sections ~~999 (a) and 999.5(f),~~ Military and Veterans Code. Reference: Sections 14837 and 14839, Government Code; Sections 999, 999.2, 999.5, 999.6 and 999.9, Military and Veterans Code; ~~and Sections 10115.9 and 10115.9,~~ Public Contract Code; Executive Order (EO) D-43-01; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ____ F.3d ____ (March 9, 1998).

Section 1896.61 is amended to read:

§ 1896.61. Authority.

(a) The Department shall have the sole responsibility for determining the eligibility of and certifying businesses as DVBEs pursuant to ~~the~~ provisions of Article 6 of Chapter 6 of Division 4, ~~Military and Veterans Code~~, commencing with § 999 of the Military and Veterans Code, and ~~Article 1.5 of Chapter 1, Part 2 of Division 2, Public Contract Code~~ § 10115.9, Public Contract Code and §§ 14839 and 14843, Government Code.

- (b) When authorized by the applicant or DVBE, the Department ~~may~~ shall share certification data and information with records to enable certification by other state, federal or local agencies for purposes of enabling a DVBE applicant to become certified with other public agencies.

Note: Authority cited: Sections 14600, 14837(e), and 14839 and ~~14843~~, Government Code; and Sections ~~999.5(b)~~ and ~~999.5~~, Military and Veterans Code. Reference: Sections ~~14837(e)~~ and 14839, Government Code; Sections 999.5 and 999.9, Military and Veterans Code; and Section 10115.9, Public Contract Code.

Section 1896.62 is amended to read:

§ 1896.62. Definitions.

The terms defined in this article shall have the following meanings whenever they appear in this subchapter and subchapter 10.6:

- (a) ~~Administering agency means the Department of General Services' Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) in the case of certification and the Procurement Division in the case of contracts governed by § 999.2 of the Military and Veterans Code.~~
- (b) ALJ means Administrative Law Judge, appointed by the Office of Administrative Hearings in accordance with, as defined in Government Code § 11502(b), assigned by the Office of Administrative Hearings.
- (be) Applicant means a business that has submitted an request application (electronic or paper version) for certification as a Disabled Veteran Business Enterprise with the Office of Small Business and DVBE Services (OSDS).
- (cd) Awarding department is as defined in Military and Veterans Code § 999(b)(2) ~~means any state agency, department, or an official empowered by law to enter into contracts on behalf of the State of California.~~
- (de) Bid means an offer made in response to a solicitation.

- ~~(ef)~~ Broker or Agent means any individual or entity that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department. ~~Any qualifying disabled veteran who does not own 51 percent of the fair market value of the materials and supplies shall be deemed a broker or agent.~~
- ~~(g)~~ Certification approval means a business has met certification criteria as determined in §§ ~~1896.81, 1896.82, and 1896.83.~~
- ~~(h)~~ Certification denial means an application was denied.
- ~~(i)~~ Certification notice means a business was notified, in writing, to provide additional documentation to maintain certification eligibility.
- ~~(j)~~ Certification revocation means certification was revoked for any of the reasons specified in § ~~1896.82(l).~~
- ~~(k)~~ Commensurate means corresponding in size, amount, degree; or proportion.
- ~~(l)~~ Commercially Useful Function (CUF) means the same as Military and Veterans Code § ~~999(b)(5)(B) defines.~~
- ~~(m)~~ Complete federal tax return means copies of all forms, schedules, amendments (if any), and attachments as submitted to the Internal Revenue Service.
- ~~(n)~~ Contract is means any defined agreement in Military and Veterans Code § 999(b)(4) to provide labor, services, materials, supplies, information technology, or equipment in the performance of a contract, franchise, concession or lease granted, let or awarded for and on behalf of the state. ~~It does not include agreements executed for subvention aid or local assistance. Nor does it include contracts which provide assistance to local governments and aid to the public directly or through an intermediary, such as a non-profit corporation.~~
- ~~(o)~~ Contractor means any individual or entity that enters into a contract as defined in § ~~1896.62(n).~~
- ~~(p)~~ Control, as subdivision (b)(10) of § 999 of the Military and Veterans Code references, means the disabled veteran owners and/or disabled veteran managers, have the power

~~and authority to determine expertise specifically in the business's field of operation in controlling the overall destiny and in controlling the day-to-day operations of the business.~~

(~~kq~~) Department or DGS means the Department of General Services.

(~~lf~~) Disabled veteran (DV) means a veteran of the military, naval or air service of the United States, including but not limited to, the Philippine Commonwealth Army, the Regular Scouts ("Old Scouts"), and the Special Philippine Scouts ("New Scouts"), who has at least a 10 ~~ten~~-percent ~~[delete non-breaking hyphen]~~ service-connected disability ~~recognized by the United States Department of Veterans Affairs or United States Department of Defense~~ and who is domiciled in the State of California.

(~~ms~~) Disabled Veteran Business Enterprise or DVBE is as defined in Military and Veterans Code § 999(b)(7) ~~means any business certified by the OSDS, as determined in § 1896.81.~~

(~~n~~) Discontinuance means a gap in certification remediable by restoration of certified status in accordance with §1896.85.

(~~ot~~) DVBE Joint Venture means one or more DVBEs that have entered into a written agreement with at least one other business to hold a minimum of ~~fifty one percent (51%)~~ percent or more of the joint venture's management, control, and earnings, and to engage in and carry out a venture for which purpose they combine their efforts, property, money, skills and/or knowledge.

(~~u~~) ~~Equipment broker means one or more DVs who have not established 51-percent ownership of the fair market value of each piece of equipment. This includes possession and risk of loss for equipment that is rented or provided, either directly or as a subcontractor, to an awarding department. It also includes DVs who do not provide individual tax returns, pursuant to Military and Veterans Code § 999.2(c).~~

(~~v~~) ~~Equipment rental means any piece of equipment that is rented or provided for use under contract to an awarding department, including equipment for which operators are provided.~~

(pw) Foreign corporation, foreign firm and foreign-based business has the same meanings as Military and Veterans Code § 999(b)(8) a business that is incorporated or has its principal headquarters located outside of the United States of America.

(x) Frivolous means an appeal with any of the following characteristics:

(1) It is wholly without merit.

(2) The appellant has not submitted a rational argument based upon the evidence, regulation and law, which established the appeal.

(3) The appeal is based upon grounds other than those specified in § 1896.95.

(qy) Joint bid means one bid submitted by two or more businesses.

(z) ~~Manufacturer means a business that performs the primary activities in transforming inorganic or organic substances into the end item being acquired, and is not a packager, or in the case of kits, a final assembler. The end item shall possess characteristics that, as a result of mechanical, chemical, or human action, it did not possess before the original substances, parts, or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semi-finished as a raw material to be used in further manufacturing. Additionally, it meets both of the following requirements: factors considered by the federal Small Business Administration pursuant to Title 13, Code of Federal Regulations (CFR), Chapter 1, Part 121, § 121.406(b)(2) and whether more than fifty percent of annual gross receipts, as determined by the Department, result from the manufacturer and sales of products manufactured by the business as defined in Government Code § 14837(c), pursuant to the determination criteria set forth in § 1896.12, Title 2, California Code of Regulations.~~

(raa) Non-disabled veteran (Non-DV) means any individual who is has not established a Military and Veterans Code § 999(b)(7)(A) recognized DVBE disabled veteran status.

(bb) ~~Office of Administrative Hearings (OAH) means an office within the Department of General Services.~~

~~(see)~~ Office of Small Business and DVBE Services (OSDS) means the organizational section of office within the Department of General Services, Procurement Division, designated as the California Disabled Veteran Business Program “administering agency” and that is charged with adopting DVBE practices, policies, guidelines and regulations administration of the DVBE Participation Program in accordance with the Military and Veterans Code § 999 (b)(1), Public Contract Code § 10115.4, and Government Codes § 14839.

~~(t)~~ Principal office is the place where the business is headquartered, conducts management and directs operations of the business and has the same meaning as “home office” referenced in Military and Veterans Code § 999(b)(7)(A)(iii).

~~(udd)~~ Solicitation is defined in State Contracting Manual Volume 2, Chapter 4.B1.0 means the notice to prospective bidders that an awarding department wishes to receive bids for furnishing goods, services, information technology, or construction.

~~(ee)~~ Statutory disability means a service-connected disability enumerated under Title 38, United States Code, § 1114.

~~(vff)~~ Subcontractor means the same as Military and Veterans Code § 999.10(c) any individual or entity that will perform a part of the contract.

~~(gg)~~ Suspension means a temporary debarment from bidding on or participating as a contractor or subcontractor in any state contract.

~~(hh)~~ Unconditional ownership means ownership that is not limited by conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another, as determined in § 1896.81.

Note: Authority cited: Sections 14600, 14615, 14839 and 148432, Government Code; Sections 999 and 999.5, Military and Veterans 2052, 10115.3 and 10295, Public Contract Code; and Sections 10295, Public Contract 999 and 999.5, Military and Veterans Code. Reference:

Section 11502, Government Code; Sections 999, 999.2, and 999.10, Military and Veterans Code; Sections 10115, 10115.1, 10115.2, 10115.3 and 10115.10295, Public Contract Code; ~~Section 999, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).~~

Article 2. DVBE Participation in State Contracting

Section 1896.70 is amended to read:

§ 1896.70. DVBE Participation Goals.

- (a) ~~The DVBE statewide participation program goals established in Military and Veterans Code §§ 999.2(a) and 999.5 and Public Contract Code § 10115(c), applies to the aggregate awarding department's overall amount annually spent by expenditures for contracts as defined by the awarding departments § 1896.62(n).~~
- (b) For each specific solicitation leading to a contract award, ~~t~~The Director or designee of an awarding department shall establish an appropriate DVBE participation goal either less than or in excess of the statutory goal of 3 ~~three~~ percent ~~for each specific solicitation or contract.~~ Determining factors for setting an appropriate level of DVBE participation, as either a prime contractor or subcontractor, include but are not limited to:
- (1) The elements of work reasonably support the specified level of DVBE ~~subcontractor~~ participation ~~is reasonable.~~
 - (2) A search of the OSDS' certification database indicates ~~supports~~ sufficient DVBEs to perform the solicited work.
 - (3) DVBE contractors, subcontractors, or suppliers have performed elements of the work on similar contracts.
 - (4) Bidders historically have achieved or have not achieved the specified level of participation.

- (c) The awarding department's Director or designee may exempt a solicitation from DVBE participation. Determining factors for such exemption include, but are not limited to:
- (1) ~~Few~~ Little or no DVBE subcontracting opportunities.
 - (2) Subcontracting the work is not normal for the industry.
- (3) Work is so specialized that ~~there are~~ few or no DVBEs that can perform the it work.
- (4) Procurement pursuant to Government Code §§ 14838.5(a) or 14838.7(a) of ~~Government Code~~.
- (d) To qualify as a responsive bidder for contracts requiring DVBE participation, a bidder shall document at or prior to the time of bid opening a commitment to fulfill the participation goal, in addition to meeting all other requirements.
- (e) The commitment to achieve ~~requirement for satisfying~~ the participation goal is satisfied ~~shall be deemed to have been met~~ when the awarding department determines that the bidder is either:
- (1) ~~The awarding department determines that the bidder performs a CUF as identified in the solicitation and the bidder is either:~~ (A) A DVBE who performs a Commercially Useful Function (CUF), as § 1896.71 requires, and meets or exceeds ~~committed to perform not less than the participation goal stated in the solicitation; with its own resources or in combination with those of other DVBEs, or~~
 - (2B) ~~Is not~~ A non-DVBE and shall who uses one or more DVBEs to perform a CUF and who meets or exceeds ~~for not less than~~ the participation goal stated in the solicitation ~~bid~~.
- (f) The awarding department shall find that a ~~the~~ DVBE joint bid has met the participation goal providing the DVBE joint bidders satisfy all of the following conditions:
- (1) At least one partner is a DVBE; and
 - (2) At least one DVBE partner is responsible for a clearly defined portion of the work. The work shall be identified as a task, as a percentage, and as a dollar amount of the overall

bid.

(g) The bidder's authorized representative shall include the following:

- (1) The name of each DVBE proposed for use in the contract;
- (2) The dollar amount and percentage each DVBE shall perform in comparison to the total contract dollar amount; and
- (3) A Description of the tasks each DVBE will perform.

(h) Contracts between the state and other government agencies including public colleges as well as agreements executed for subvention aid or local assistance, or to provide assistance to local governments and aid to the public directly or through an intermediary, such as a non-profit corporation, are exempt from DVBE participation requirements.

(i) Contracts with auxiliary organizations or foundations of public colleges and universities are not subject to DVBE participation requirements when the agency directly contracts for work utilizing the organization's staff or students.

Note: Authority cited: Sections 14600 and ~~14839~~145, Government Code; ~~Sections 10115.3(b) and 10295, Public Contract Code;~~ and Section 999.5(f), Military and Veterans Code. Reference: Sections 14615, 14838.5 and 14838.7, Government Code; Sections 999, 999.1, 999.2 and 999.5, Military and Veterans Code; Sections 10115, and 10115.2 and 10115.9, Public Contract Code; Sections 999(b)(7), and 999(b)(9), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

Section 1896.71 is amended to read:

§ 1896.71. Definition and Determination of Commercially Useful Function (CUF).

(a) A DVBE ~~certified disabled veteran business~~ contractor, subcontractor or supplier of goods and/or services that contributes to the fulfillment of the contract requirements, shall perform a Commercially Useful Function (CUF) for each contract.

(b) A DVBE ~~disabled veteran business~~ contractor, subcontractor, or a supplier of goods and/or of services is deemed to perform a CUF if the business does all of the following:

- (1) Is responsible for the execution of a distinct element of work of the contract (including the supplying of services and goods);
- (2) Carries out its obligation by actually performing, managing, or supervising the work involved;
- (3) Performs work that is normal for its business services and functions;
- (4) Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment;
- (5) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(c) A contractor, subcontractor or supplier will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in the transaction, contract or project through which funds are passed in order to obtain the appearance of DVBE participation.

(d) Contracting/procurement officials of the awarding department must:

- (1) Evaluate if a DVBE ~~certified disabled veteran business~~ awarded a contract meets the CUF requirement as defined in subdivision (b), and
- (2) During the duration of the contract, monitor for CUF compliance (See State Contracting Manual Volume 1 Chapter 8 and Volumes 2 and 3, Chapter 3).

(e) If a CUF evaluation identifies potential program violations, awarding departments shall investigate and report findings to the OSDS, referring to §§ 1896.88, 1896.91 and the State Contracting Manual.

Note: Authority cited: Sections 14600 and 14839, Government Code; ~~Sections 999.5, 999.5, 999.6 and 999.9 Military and Veterans Code, Sections 14837 and 14839, Government Code.~~
 Reference: Sections 14837, and 14615.1, Government Code; and Sections 999 and 999.5, 999.6 and 999.9, Military and Veterans Code.

Section 1896.72 is amended to read:

§ 1896.72. Contract Awards Considerations.

- (a) If a bidder fails to meet a required DVBE participation goal, the bidder shall be deemed unresponsive and ineligible for award.
- (b) With respect to Invitations For Bid for the purchase of supplies or equipment in accordance with ~~pursuant to the provisions of~~ Article 3 of Chapter 2 of Part 2 of Division 2, commencing with § 10301 of the Public Contract Code (~~commencing with § 10301~~) or the acquisition of information technology (IT) goods and services in accordance with ~~pursuant to the provision of~~ Chapters 3 and 3.6 of Part 2 of Division 2, commencing with § 12100 of the Public Contract Code (~~commencing with §§ 12100 or 12125~~), where the awarding department has reserved the right to make either multiple awards or a single contract award, then a single bidder shall be deemed responsive based on award for a single contract, notwithstanding the fact that the ~~such~~ bidder may be unable to ~~achieve compliance to~~ meet the established DVBE participation goal if ~~the awarding department exercises the right to make multiple awards.~~ How a department understands and applies the distinction between multiple or single contract awards is set forth in Volumes 2 and 3 of the State Contracting Manual.
- (c) Prior to contract award, the DVBE shall assure it is in compliance with Public Contract Code §§ 10410 and 10411 and any other relevant conflict of interest or incompatible activities prohibition applicable to ~~for~~ state officers, state employers, or former state employees.

Note: Authority cited: Sections 14600 and 14839645, Government Code; ~~Sections 10115.3(b) and 10295, Public Contract Code;~~ and Sections 999.5(f), Military and Veterans Code.

Reference: Sections 1460115.1 and 1999010115.2, Government Public Contract Code; Sections 999(b)(9), and 999.5(f), and 999.10, Military and Veterans Code; Sections 10115.2, 10295, 10300, 10410, 10411, and 12100, Public Contract Code; and ~~Monterey Mechanical Co. v. Wilson, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).~~

Section 1896.73 is amended to read:

§ 1896.73. Substitution of a DVBE Subcontractor.

- (a) ~~Any substitution of a DVBE subcontractors shall be by another DVBE subcontractor. used per § 1896.70 unless a~~ The substitution shall be to perform work stated in the original bid and can occur only if approved by the OSDS. A DVBE subcontractor shall be replaced by another DVBE to perform the work originally stated. The substitution shall maintain, at minimum, the level of DVBE participation goal stated in the original bid.
- (b) The contractor shall ~~concurrently simultaneously by certified mail~~ notify in writing both the original DVBE and the proposed replacement DVBE, along with the awarding department, of the intended substitution. and ~~The written notice shall contain the reasons for the substitution and be sent by certified mail. The awarding agency will provide written notice of the DVBE substitution request to both the original and proposed replacement, including instructions for objecting to the substitution.~~
- (c) The contractor shall ~~provide submit the following to the awarding department:~~ (1) a ~~A copy of the written notice issued to the original DVBE, specifying the situation or situations justifying replacement, with proof of delivery. In the absence of a proof of delivery, provide the applicable certified mail receipts will be sufficient proof of attempted delivery for documentation purposes.~~
- (d2) The DVBE subject to replacement shall have up to five business days from receipt of the notice to express their consent or opposition to the substitution. The DVBE's reply shall be sent simultaneously by certified mail to the contractor and awarding department ~~A copy of the DV's consent or opposition to the substitution. In the absence of a the consent or opposition reply, provide the returned and unopened certified mail from the contractor will be sufficient documentation.~~
- (3) ~~The name and supplier number of the business being substituted and the name and supplier number of the proposed replacement. If a DVBE cannot be identified as a replacement, the contractor shall document the absence of DVBEs. This documentation shall include but is not limited to:~~

- ~~(A) Contact with the SB/DVBE Advocates from awarding department and the Department of Veterans Affairs regarding the absence of DVBEs to perform the specific work.~~
 - ~~(B) Search results from the DGS website for DVBEs to perform the specific work.~~
 - ~~(C) Communication with DVBE Community Organization nearest the worksite regarding the absence of DVBEs, if applicable.~~
 - ~~(D) Documented communication with DVBEs describing the work to be performed, its percentage of the overall contract, the corresponding dollar amount, and their responses to the request.~~
- ~~(c) The DVBE shall have up to five business days from the postmark date to consent or oppose the substitution. A copy of the DVBE's reply shall be sent simultaneously by certified mail to the contractor and awarding department.~~
- ~~(e) When a written oppositions to a substitution is are filed, the DVBE subject to substitution is entitled to a hearing, to be conducted by the awarding department shall grant the DVBE a hearing. The hearing notice shall be issued by the awarding department within five business days from the awarding department's receipt of the written opposition and shall provide the DVBE subject to replacement a minimum of five business days' notice prior to the hearing. All essential hearing time and place details will be provided to the applicable DVBE, including the reasons for the hearing, the name of the person hearing the issue, and applicable accessibility information If the awarding department grants the substitution, continue to § 1896.73(e).~~
- ~~(f) Upon the awarding department's determination that there are legitimate reasons for a DVBE subcontractor replacement, tThe awarding department shall submit a the substitution request to the OSDS:~~
- ~~(1) The request must satisfy meet the criteria as subdivision (g) specified above or § 4107 of the Public Contract Code for Public Works.~~

(2) The substitution request shall be accompanied by any the hearing decision, including the name and certification number of the business being substituted and the name and certification number of the proposed replacement along with the contract number, contract amount, amount of the original DVBE commitment, the amount of the new DVBE commitment, the justification for the substitution, and the date written objection was received, if when applicable.

(3) If a DVBE cannot be identified as a replacement, the contractor shall document the absence of DVBEs as subdivisions (f)(3)(A) through (E) set forth, and include the applicable contract modifications § 1896.76 requires under such circumstances.

(A) Confirmation of the absence of DVBEs to perform the work specified obtained from SB/DVBE Advocates from the awarding department and the Department of Veterans Affairs.

(B) Results of a search of the OSDS statewide directory database for DVBEs in that line of business.

(C) Evidence of communication with DVBE community organizations nearest the worksite regarding the absence of DVBEs, if relevant.

(D) Documentation of communication with DVBEs describing the work to be performed, its percentage of the overall contract, the corresponding dollar amount, and their responses to the request.

(E) Email documentation of steps (A) through (D) is acceptable. In such instances, proof of non-delivery shall be the printed "undeliverable" messages received when emails are returned to the sender's inbox.

(g) The OSDS will respond to substitution requests within three (3) business days. The OSDS shall consent to the replacement substitution of another DVBE subcontractor shall be in any of the following situations in harmony with, or conforming to the public works substitution provisions of Public Contract Code § 4107, and in accordance with the

replacement authority granted DGS by Military and Veterans Code § 999.5(e):

- (1) When the listed DVBE subcontractor, after reasonable opportunity, fails or refuses to execute the contract within the scope and price specified ~~becomes bankrupt, insolvent or goes out of business.~~
- (2) When the listed DVBE subcontractor becomes insolvent or bankrupt or ceases to exist ~~does not perform as listed in the Bidder Declaration.~~
- (3) When the listed DVBE subcontractor fails or refuses to perform as subcontractually obligated ~~does not meet the bond requirements of the contractor.~~
- (4) When the listed DVBE's subcontractor fails or refuses to meet the bond requirements of the contractor ~~name is incorrect due to an inadvertent clerical error. In the case of public works contracts, compliance with § 4107.5 of the Public Contract Code is required.~~
- (5) When the prime contractor demonstrates to the awarding department that the intended DVBE subcontractor name was incorrect due to an inadvertent clerical error. In the case of public works contracts, compliance with Public Contract Code § 4107.5 is required ~~is not licensed as required by any State of California regulatory agency.~~
- (6) When the listed subcontractor is not licensed as required by any state of California regulatory authority. ~~awarding department, or its duly authorized officer, determines that the DVBE:~~
 - ~~(A) — Did not perform in accordance with the plans and specifications; or,~~
 - ~~(B) — Has delayed or disrupted the progress of the work.~~
- (7) When the awarding department, or its duly authorized officer, determines that the work performed by the listed DVBE subcontractor is substantially unsatisfactory because the subcontractor:
 - (A) Did not perform in accordance with the plans and specifications; or,
 - (B) Has delayed or disrupted the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project.

(9) When the awarding authority determines that a listed subcontractor is not a responsible subcontractor.

~~(h)~~ The DVBE subcontractor replacement ~~substitution~~ process shall not be used as an excuse for noncompliance with any provision of law. This includes, but is not limited to, the Subletting and Subcontracting Fair Practices Act provisions of the ~~(§ 4100 et seq.,~~ Public Contract Code) or any contract requirements relating to substitution of subcontractors.

~~(i)~~ Contractors who proceed with work pending OSDS's approval of a substitution decision may be subject to contract termination, and/or the recovery of damages under the rights, remedies and penalties provisions of statute, including those ~~This is outlined in § 999.9 of the Military and Veterans Code, § 10115.10 of the Public Contract Code or § 4110 of the Public Contract Code (applies to public works only).~~

Note: Authority cited: Sections 14600 and ~~14839~~645, Government Code; ~~Sections 10115.3 and 10295, Public Contract Code;~~ Section 999.5, Military and Veterans Code. Reference: Sections 999, 999.5 and 999.9, Military and Veterans Code; and Sections 4107, 4107.5, 4110, 10115.1, and 10115.2, 10115.10 and 10295, Public Contract Code; ~~Sections 999 and 999.5, Military and Veterans Code.~~

Section 1896.74 Authority and Reference notes are amended to read:

§ 1896.74. Contract Approval.

For purpose of Public Contract Code § 10295, an awarding department shall demonstrate compliance with the part of Article 1.5 (commencing with § 10115) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code that concerns DVBEs.

Note: Authority cited: Sections 14600 and ~~14839~~645, Government Code; and Sections 999.5, Military and Veterans Code ~~10115.3(b) and 10295, Public Contract Code.~~ Reference: Sections 10115.10 and 10295, Public Contract Code; and ~~Monterey Mechanical Co. v. Wilson, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).~~

Section 1896.75 is amended to read:

§ 1896.75. Special Requirements for Contracts that include Rented Equipment.

(a) Any DVBE ~~who will renting~~ equipment for use in any state contract shall, prior to performing the contract, submit a ~~signed~~ declaration signed by DV owners and managers as required by Military and Veterans Code § 999.2(d). Declarations may be submitted on a form made available as part of the solicitation. ~~The declaration and must include the requirements are~~ as followings:

- (1) The name, address, telephone number, and tax identification number of each DV owning at least 51 percent of each piece of equipment.
 - (2) Declare that complete copies of each DV equipment owner's individual federal income tax return has been provided to the OSDS. ~~The declaration shall also state and that each applicable~~ the DVBE has met and maintains all certification requirements, including post certification submission of all federal tax returns.
 - (3) Declaration of whether or not the DVBE is a broker. Any qualifying disabled veteran who does not own 51 percent of the fair market value of the equipment, materials and supplies shall be deemed a broker or agent. If the DVBE is a broker, ~~provide~~ the name, address, and telephone number of the DVs acting as a broker or agent is required.
- (b) Failure to provide these declarations to the awarding department will result in the DVBE being deemed an equipment broker in accordance with Military and Veterans Code §§ 999.2(~~be~~) and 999.2(c). ~~Furthermore, the Awarding departments~~ shall not count any contract or subcontract with an equipment broker toward DVBE participation goals. In addition, DVBE equipment brokers shall not be considered for the award of ~~for the~~ SB/DVBE Options afforded under Government Code §§ 14838.5 and 14838.7.

Note: Authority cited: Sections 14600 and 14839.6-15, Government Code; and Sections 999.5, Military and Veterans Code 10108.7, 10115.3 (b) and 10295, Public Contract Code; Sections 999.1 and 999.2, Military and Veterans Code; and Sections 14838.5 and 14838.7, Government

~~Code.~~ Reference: Sections 14838.5 and 14838.7, Government Code; Sections 999.2 and 999.5, Military and Veterans Code; and Sections 10108.7 and 10295, Public Contract Code.

Section 1896.76 Authority and Reference notes are amended to read:

§ 1896.76. Contract Modifications.

The contractor and awarding department may determine the need to amend a contract. The contract should describe how modifications would be handled to maintain the highest level of DVBE participation. If the modification is for additional work, the awarding department should maintain at least the same percentage of DVBE participation as in the original contract. The contracting official shall document the file to describe the modifications and DVBE participation.

Note: Authority cited: Sections 14600 and ~~14839.6~~¹⁴⁵, Government Code; ~~Sections 10115.3(b) and 10295, Public Contract Code;~~ and Section 999.5(f), Military and Veterans Code. Reference: ~~Sections 10115.1 and 10115.2, Public Contract Code;~~ and Section 999.5, Military and Veterans Code.

Section 1896.77 Authority and Reference notes are amended to read:

§ 1896.77. Contract Audits.

(a) When an awarding department issues a contract, it shall include a provision, where the contractor agrees that the awarding department shall have:

- (1) The right to review, obtain, and copy all records pertaining to performance of the contract;
- (2) Any relevant information requested; and
- (3) Access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation.

(b) Contractor further agrees to maintain such records for a period of three years after final payment under the contract.

Note: Authority cited: Sections 14600, ~~and 14615, and 14839~~, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Section 8546.7, Government Code; Section 10115.3(a), Public Contract Code; and State Contracting Manual, Volume One, Chapter 7, Subdivision 7.50 *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

Section 1896.78 is amended to read:

§ 1896.78. Reporting DVBE Participation Goals.

- (a) DVBE participation must be included in the contracting activity ~~Data reported by the awarding departments as required by Public Contract Code § 10111 of the Public Contract Code, § 999.5(d) of the Military and Veterans Code and § 14841 of the Government Code~~ require, shall be consistent with the regulations governing the award of the contracts. For contracts with a participation goal, awarding departments shall report ~~awards shall be reported~~ as proposed by the contractor per § 1896.70(g) or as documented by contract modification per § 1896.76. For contracts awarded without a participation goal, the awarding departments shall report each DVBE business represented in the contract ~~that is a DVBE~~.
- (b) Awarding departments shall not count ~~contracts~~ toward its DVBE participation goal funds expended on a toward DVBE during any period in which that enterprise participation goals is not in compliance ~~that were awarded to equipment brokers as defined in § 1896.62(u) and in accordance with the subdivision provisions of Military and Veterans Code §§ 999.2(cb)(3), 999.2(de) and 999.2(fe), regarding required declarations.~~
- (c) ~~Awarding departments shall not count toward participation goals any~~ Contract funds awarded during any period in which a DVBE is not in compliance with Military and Veterans Code § 999.2(g)(4) with respect to furnishing required tax returns declarations, cannot count toward DVBE participation goals.
- (d) Awarding departments shall not count toward the DVBE participation goals any state funds expended with a business that is not DVBE certified in accordance with Military and

Veterans Code § 999.2(g)(4).

(e) Upon completion of a contract for which a commitment to achieve a DVBE goal was made, the prime contractor who subcontracted with DVBEs, shall certify in writing to the awarding department, all of the following items listed in accordance with subdivisions (1) through (4) the Military and Veterans Code § 999.5:

(1) The tTotal amount the prime contractor received under the contract.

(2) The name and address of each ~~the~~ DVBE that participated in the performance of the contract.

(3) The amount each DVBE received from the prime contractor.

(4) That all payments under the contract have been made to the DVBE.

(5f) Awarding departments shall maintain the prime contractor's written statement in § 1896.78(e) certifications on file in accordance with ~~pursuant to~~ their records retention practices for contracts requirements and provide annually to the OSDS, as the State Contracting Manual directs, subcontracting consolidation reports.

Note: Authority cited: Sections 14600, ~~and 14839615,~~ and 14615.1, Government Code; ~~Section 10111, Public Contract Code;~~ and Sections 999.2 and 999.5, Military and Veterans Code. Reference: Sections 14615.1 and 14841, Government Code; Sections 999.2 and 999.5, Military and Veterans Code; Section 10111, Public Contract Code; Sections 999.2 and 999.5, Military and Veterans Code; and Volume 2, Chapter 12 and Volume Fi\$cal, Chapter 9, State Contracting Manual ~~Monterey Mechanical Co. v. Wilson, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).~~

Article 3. DVBE Certification

Section 1896.80 is unchanged.

§ 1896.80. Application.

In order to be considered by OSDS for certification as a DVBE, a business must apply electronically via <https://caleprocure.ca.gov/pages/sbdvbe-index.aspx> or submit a completed hard

copy of the Request for Certification (Rev. 11/4/2016), incorporated by reference, obtained at http://www.documents.dgs.ca.gov/pd/smallbus/SBDVBE_CertApp.pdf to OSDS including all of the required substantiating documentation and information that supports the business' eligibility at the time of application for DVBE certification under Section 999 of the Military and Veterans Code.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 999 and 999.5, Military and Veterans Code.

Section 1896.81 is amended to read:

§ 1896.81. Eligibility for DVBE Certification ~~as a DVBE.~~

~~(a) Applications shall be approved, and certification granted, when found to have met eligibility requirements. Applications that do not meet these requirements shall be denied. If a business is unable to maintain eligibility or has violated program requirements, the certification shall be revoked. The DVBE applicant or DVBE shall, pursuant to the requirements of Military and Veterans Code §§ 999 and 999.2, meet and maintain all of the~~ following qualifying criteria:

- (1) ~~The DVs shall have at least a 10 ten percent service-connected disability and be~~ domiciled in California.
- (2) The principal office of the firm shall be located in the United States, and cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.
- (3) The business shall be at least 51-percent *[delete non-breaking hyphen]* unconditionally owned by one or more DVs.
- (4) The daily business operations shall be managed and controlled by one or more DVs. The DV(s) ~~who managings and controllings~~ the business is/(are) not required to be the DV business owner(s).

- (5) The DVBE shall have filed and submit federal tax returns and submitted copies to the OSDS in accordance with the requirements of Military and Veterans Code § 999.2(g) annually, without exception.
- (b) An entity meets the 51 percent unconditional ownership criteria if ~~The OSDS shall evaluate ownership according to the following criteria for types of businesses:~~
- (1) It is a sole proprietorship with at least 51-percent *[delete non-breaking hyphen]* ownership by one or more DVs. ~~If the sole proprietorship submits a federal individual federal tax return submitted by the sole proprietorship, each owner shall submit a Schedule C. The Schedule C shall demonstrate list that~~ the qualifying DV is as the majority owner.
- (2) It is a partnership with at least 51-percent *[delete non-breaking hyphen]* interest unconditionally owned by one or more DVs. The partnership agreement shall reflect each owner's interest. There shall be no formal or informal restrictions which limit DV owner control.
- (3) It is a limited liability company (LLC) with a showing of one hundred (100) percent unconditionally ownershiped by one or more DVs.
- (4) It is a corporation with at least 51-percent *[delete non-breaking hyphen]* unconditional ownership of all outstanding stock, including but not limited to voting stock owned by one or more DVs. DV owners shall control the board of directors. There shall be no formal or informal restrictions which limit voting power or control of DV owners.
- (5) It is a subsidiary that is wholly owned by a- ~~The parent corporation, but only if shall be unconditionally owned by one or more DVs. The DVs shall own~~ at least 51 percent of voting stock of the parent corporation is unconditionally owned by one or more disabled veterans.

- ~~(c) Ownership by a living trust.~~ (6) Ownership by a living trust shall be equivalent to ownership by a DV, only if the trust is shall be revocable, and the DV owner(s) is/are shall be the sole grantor(s) and, trustee(s) and beneficiary.
- ~~(d) (7) With the exception of LLC's which have to be 100 percent DV owned, DV o~~Ownership as documented in by an employee stock ownership plan is allowable only if non-DV employee ownership under t.—The plan does not exceed shall be less than or equal to 49-percent [delete non-breaking hyphen] ownership.
- ~~(e) (8) Ownership shall be U~~unconditional ownership by one or more DVs shall mean that: oOwnership is shall not be subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements of voting rights, or ~~other~~ arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms. ~~(f) In determining unconditional ownership, any U~~unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by DVs are disregarded. However, any unexercised stock options or similar agreements, held by Non-DVs (including rights to convert non-voting stock or debentures into voting stock), held by Non-DVs will be treated as exercised, ~~except for any ownership interests that are held by investment companies licensed under part 107 of Title 13, Code of Federal Regulations.~~
- (9g) One or more DV owners must shall be entitled to receive:
- (A1) Allocation or distribution of aAt least 51 percent of the entity's annual distribution of losses or profits paid to the owners of a corporation or partnership;
- (B2) One hundred percent of Tthe entire value of shares of ownership shares stock in the event that the stock is sold;

~~(C3) At least 51 percent of the retained earnings of the business. In the event of dissolution of the corporation or partnership, the DV shall receive 100 percent of the unencumbered value of each share owned.~~

~~(4) Profits of the business commensurate with the extent of ownership interest.~~

~~(ch) OSDS shall determine certification eligibility on the basis of the following management and control factors and conditions. The DV owners and/or DV managers shall document that they maintain control of the business. The OSDS regards Ccontrol as includesing both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations; and - A business's management and daily business operations shall be conducted by one or more DVs. The DVs managing the business shall have managerial experience of the extent and complexity needed to run the business. However, where a license is held by a Non-DV having an ownership interest in the business, the Non-DV may be found to control the business. (i) Control is comprised of two parts -- Managerial and Operational.~~

~~(1) DV owners shall have managerial control of the overall direction destiny of the business, shaping its destiny. The DV owners and/or DV managers shall demonstrate responsibility for the critical areas of the business's operations and . The DV owners and/or DV managers shall be personally responsible for, including but not limited to, the following:~~

~~(A) Negotiations, execution and signature of contracts; and~~

~~(B) Execution of financial (credit, banking, bonding) transactions and agreements.~~

~~(2) To have operational control of the day-to-day operations, the DV owners and/or DV managers shall demonstrate independent decisions for the day-to-day operations. Absentee or titular management by the qualifying DVs is not considered shall not be deemed to be in operational control. The DV owners and/or DV managers shall demonstrate include an active role in controlling the business. Operational cControl is~~

demonstrated by, including but not limited to, all of the following:

(A) DV owners and/or DV managers possess the requisite experience, education, knowledge and qualifications in the business's field of operations;

(B) No third party agreements restrict control by DV owners and/or DV managers; and

(C) DV owners and/or DV managers control the operation of the business in the following areas:

1. Supervision - directly responsible~~ibility~~ for subordinates

2. Work force - directly responsible~~ibility~~ for subordinates, contractors or subcontractors

3. Equipment

4. Materials

5. Facilities (office/yard)

~~(3j) A~~ The business shall be controlled by one or more DV or DVs who controlling the business shall possess requisite management capabilities:

~~(A1) DVs shall~~ Show sustained and significant time invested in the business. A DV engaged or in full-time employment with any ~~or management with another business(es), federal, state, or local governmental entity(ies), in any capacity, (30 hours per week or more)~~ shall submit a detailed statement with the request for certification, explaining application. ~~The statement shall demonstrate why such these activities, duties or responsibilities do will not impair impact~~ the DV's ability to manage and control the certified business enterprise. ~~If the DV is a federal, state or local government employee, a copy of the conflict of interest statement or equivalent document shall be submitted.~~

~~(B2) A DV shall~~ Hold the highest officer position exercising control over all other positions in the business.

~~(C3)~~ A DV's unexercised right to cause a change in the management of the business does not in itself constitute DV control, regardless of how quickly or easily the right could be exercised. ~~An e~~Exception is where ~~on the OSDS deems a DV(s) to~~ control the board of directors as demonstrated by the bylaws or articles of incorporation provided for in § 1896.81(m)(1).

~~(4k)~~ In the case of a partnership, one or more DVs shall serve as general partners, with control over all partnership decisions. A partnership in which no DV is a general partner will be ineligible for certification.

~~(5l)~~ In the case of a LLCs ~~limited liability company~~, one or more DVs shall serve as managing members, with control over all decisions of the LLC ~~limited liability company~~.

~~(6m)~~ In the case of a corporation, one or more DVs shall control the board of directors.

~~(A1)~~ ~~The OSDS will deem~~ DV(s) ~~to~~ control the board of directors when, including but not limited to, the following:

~~{1.A}~~ A DV(s) own(s) 100 percent of all voting stock of the business; or

~~{2.B}~~ A DV(s) own(s) at least 51 percent of all voting stock of a business, one or more ~~the~~ DV(s) is/are on the board of directors, and no supermajority voting requirements exist for shareholders to approve corporate actions. ~~If a supermajority exists that limits the majority DV's voting stock, the applicant or DVBE shall be ineligible for certification; or~~

~~{3.C}~~ One or more DVs own at least 51 percent of all voting stock, each DV owner is on the board of directors, and no supermajority voting requirements exist for shareholders to approve corporate actions. ~~The~~ DV shareholders shall demonstrate that together or combined they possess the ability to control the business ~~have an enforceable arrangement to permit DV to vote the stock of all as a block without a shareholder meeting.~~

~~(B2)~~ Where a business does not meet the requirements set forth in subdivision § 1896.81(6m)(A4), the corporate by-laws shall specify that the DVs upon whom eligibility is based shall control the board of directors. ~~In Where a business has a two-person board of directors, with one individual is a DV and the other one is not, the a non-DV vote shall be weighted. In order for the business to be eligible for certification eligibility requires,~~ the DV's vote to shall be decisive ~~worth more than one vote.~~

~~(A) Provisions for the establishment of a quorum cannot permit Non-DV directors to control the board of directors directly or indirectly;~~

~~(B) Any executive committee of the board of directors shall be controlled by DV directors unless the executive committee only makes recommendations to the board.~~

~~(C3) Provisions for the establishment of a quorum cannot permit Non-DV directors to directly or indirectly control the board of directors. Non-voting, advisory, or honorary directors may be appointed without the ability to control the board of directors.~~

~~(4) Arrangements regarding the structure and voting rights of the board of directors shall comply with applicable state law.~~

~~(7A) Non-DVs may be involved in the management of the DVBE, or as and may be minority stockholders, partners, officers, or directors, of the business. Non-DVs shall not:~~

~~(1) Exercise overall organizational control or dominance, or have the power to control the business; or~~

~~(2) Receive compensation from the business in any form as directors, officers or employees, including dividends that exceed the compensation received by the DV holding the highest officer position.~~

~~(8e) Non-DVs who transfer majority stock ownership of the business to DVs within two years, prior to the submission of a request for certification, application and remain involved in the~~

business, in any capacity, are presumed to control the business. This presumption may be rebutted by documenting that ~~the~~ DV majority stockholders meet all management and control requirements and ~~have~~s the experience necessary to manage and control all activities of the business. The rebuttal shall be submitted by ~~the~~ DV stockholder(s).

(9p) Non-DVs or entities may be found to control or have the power to control in the following situations, including but not limited to:

(A4) When the by-laws allow ~~the~~ Non-DVs through a quorum to block ~~the~~ DVs proposals.

(B2) When a ~~the~~ Non-DV provides the licenses, critical financial or bonding support upon which ~~the influence~~ business decisions is operationally dependent.

(C3) When the terms of a ~~the~~ loan agreement gives the grantor the power to control the business.

(D4) When dependency relationships ~~exist~~ with Non-DVs or entities are ~~which cause~~ such dependence that ~~the~~ DVs cannot exercise independent business judgment due to the assumption of ~~without great~~ economic risk by others.

(E) When Non-DVs receive, as directors, officers or employees, compensation from the business that exceeds the compensation received by DVs holding the highest officer position, unless exceptions apply for legitimate employee retention purposes or income deferral reasons.

(d) For purposes of this subchapter, OSD's determination of whether dual certified DVBEs are manufacturers shall, consistent with the § 1896.12(d)(3) of Title 2, California Code of Regulations (CCR) criteria for small business, include consideration of:

(1) Whether the business, with its own facilities performs the primary activities in transforming inorganic or organic substances into the end item being acquired, and is not a packager, or, in the case of kits, a final assembler. The end item must possess characteristics that, as a result of mechanical, chemical, or human action, it did not possess before the original substances, parts, or components were assembled or

transformed. The end item may be finished and ready for utilization or consumption, or it may be semi-finished as a raw material to be used in further manufacturing.

- (2) Whether more than 50 percent of its annual gross receipts, as determined by the Department, result from the manufacture and sale of products manufactured by the business.

Note: Authority cited: Sections 14600, 14615 and 1483940, Government Code; Section 999.5 (f), Military and Veterans Code, ~~and Sections 10115.3(b), 10115.9 and 10295, Public Contract Code.~~ Reference: ~~Sections 10115.1 and 10115.9, Public Contract Code; Sections 999(g), and 999.2, Military and Veterans Code, and Section 23101, Revenue and Taxation Code; Sections 10115.1 and 10115.9, Public Contract Code; Title 38, United States Code, § 1114; and Title 13, Code of Federal Regulations (CFR), Chapter I, § 121.406.~~

Section 1896.82 is amended to read:

§ 1896.82. Responsibilities of the DVBE Applicant and DVBE.

~~In order to be considered by the OSDS for certification consideration, the as a DVBE, a business must meet, including but not limited to, the following applicant must:~~

- (a) Demonstrate, with submission of the § 1896.80 Request for Certification, that A business shall meet the all requirements for certification set forth in this subchapter and Article 6 (commencing with § 999) of Chapter 6, Division 4 of the California Military and Veterans Code, are being satisfied. Requests for Certification are considered pending until OSDS determines that all eligibility requirements have been satisfied, and required documentation has been submitted and evaluated for sufficiency and completeness.
- (b) In addition to the substantiating and supporting information requirements of § 1896.80, applicants shall submit a copy of the United States Department of Veterans Affairs or United States Department of Defense documentation which proves the existence of a service-connected disability of at least 10 percent. Provide the following documentation to OSDS electronically or by paper copy, no later than five o'clock p.m. (5:00 p.m.) of the bid due

~~date, unless the regulations (§ 1896 et seq., Title 2, California Code of Regulations) implementing the Small Business Procurement and Contract Act (SBPCA) specify a different time, in which case the submission time for application as identified in the SBPCA shall prevail:~~

- ~~(1) A completed DVBE certification application and required support documents;~~
- ~~(2) A copy of an Award of Entitlement letter from the United States Department of Veterans Affairs or United States Department of Defense that was issued within six months of the application. The letter shall certify the existence of a service-connected disability of at least ten percent;~~
- ~~(c) When bidding due dates apply, the certification request should be filed no later than the end of the bid due date, unless rules for the Small Business Procurement and Contract Act (2 CCR § 1896 et seq.) specify a different time, in which case the time for submission of the request for certification as so identified in that subchapter shall prevail DVBEs shall notify the OSDS in writing upon changes of the business address, contact information, and changes to the DVs home address within 30 calendar days.~~
- ~~(d) If the department determines just cause as identified in subdivision (b)(2) of Government Code section 14840, OSDS may require the certification applicant, owner of the disabled veteran business enterprise, or the certified firm, to complete and submit to OSDS an Internal Revenue Service Form 4506-T from the United States Treasury, requesting a transcript of their or its tax return In the case of a renewal, the qualifying DV shall certify in writing there are no changes in the service-connected disability status. If the disability status has changed, a new Award of Entitlement letter is required.~~
- ~~(e) In reviewing a request for certification OSDS may A DVBE shall maintain all licenses, permits and registrations, including but not limited, to those issued by any California State Department or local government.;~~

~~(1) Consider information previously submitted, provided, or collected,~~

(2) Require additional documents and information that support or prove eligibility, or

(3) Require clarifications, additional documentation, corrections or amendments, to the request for certification, including the supporting documentation submitted.

(f) DVBEs must notify OSDS promptly, in writing, upon any change in the business address, contact information, or the DVs home address that may occur before obtaining certification

~~A DVBE shall provide notice to the OSDS and the awarding department, including but not limited to, any changes in licenses, permits, registrations, operation or ownership within 30 calendar days.~~

(g) Another's governmental organization's DVBE certification cannot be accepted as the equivalent of OSDS certification, due to differing standards

~~A DVBE, including a DV in the case of equipment ownership, shall provide the OSDS the most recent copies of federal tax returns and amendments upon filing with the Internal Revenue Service. OSDS may require the DV or the certified firm to complete and submit an Internal Revenue Service Form 4506-T pursuant to Government Code 14840(b), for the purpose of requesting a transcript for certification eligibility review.~~

~~(h) The following shall be required for changes in ownership or business structure:~~

~~(1) DVBE shall submit a new application identifying the new DV owners, DV managers and new business structure. Continued eligibility and the award of any new contracts require that the OSDS first verify that all eligibility requirements are met by the business and the new owners.~~

~~(2) Any DVBE that is performing contracts and desires to substitute one DV owner for another DV shall submit a proposed novation agreement and supporting documentation to the awarding departments prior to the substitution or change of ownership for approval.~~

~~(3) In the event of a permanent disability or death of the majority DV owner, the business shall do the following within 30 calendar days:~~

~~(A) Notify awarding departments.~~

~~(B) Submit documents establishing the DV's permanent medical disability or death to the OSDS. In addition, provide documents verifying who controls or has inherited the business. Upon proof of a DV's permanent medical disability or death, the DV majority owned business shall be deemed to continue as a DVBE for a period not to exceed three years after the date of death or after the date of certification of permanent medical disability, if the business is inherited or controlled by the spouse or child of the majority owner, or by both of those persons.~~

~~(C) A business is deemed to continue as a DVBE pursuant to subdivision (h)(3)(B) solely for the purpose of:~~

- ~~1 Fulfilling the requirements of a contract entered into, prior to the death or certification of permanent medical disability, for the duration of said contract, or~~
- ~~2 Providing sufficient time to make orderly and equitable arrangements for the disposition of the business, except that the business shall not enter into any new contract as a DVBE, if the contract cannot be completed within the allowable three year period.~~

~~(i) A DVBE shall perform a CUF pursuant to § 1896.62(l) as determined by § 1986.71 by awarding departments.~~

~~(j) A DVBE shall withdraw their certification when they no longer meet eligibility requirements. The OSDS shall end the certification except when the business or its affiliates are under investigation.~~

~~(k) Applicants are responsible for renewing certifications whether or not a renewal notice is received. Renewals shall be submitted, including required documents, prior to the certification expiration dates. Applicants may submit an electronic or paper application. Both options are located on the website at www.dgs.ca.gov. Renewals may not be submitted earlier than 90 calendar days before certifications expire. An applicant with an expired~~

~~certification shall submit a new application. An expired certification shall not be submitted as a renewal application.~~

~~(l) DVBE certification shall be revoked for any of the following reasons:~~

- ~~(1) — Failure to respond to a certification notice issued by the OSDS within 30 calendar days from the date of the notice.~~
- ~~(2) — Failure to notify the OSDS and the awarding department that the certification requirements have not been maintained pursuant to § 999.2(h) of the Military and Veterans Code.~~
- ~~(3) — Failure to submit federal income returns as required by § 999.2(g) of the Military and Veterans Code.~~
- ~~(4) — Failure to reinstate to an active status with the California Secretary of State within 60 calendar days.~~
- ~~(5) — Violation of § 999.9(a) of the Military and Veterans Code shall also include, but is not limited to, suspension from participation in state contracting.~~
- ~~(6) Violation of §§ 14842 or 14842.5 of the Government Code shall also include, but is not limited to, suspension from participation in state contracting.~~

Note: Authority cited: Sections 14600, 14615 and 14839~~40~~, Government Code; and Sections 999 999.2 and 999.5, Military and Veterans Code, ~~and Sections 10115.3, 10115.9 and 10295, Public Contract Code.~~ Reference: Sections 14839, 14839.1, 14840~~10115.1~~ and 14843~~10115.9, Government Public Contract Code; and Sections 999.2 and 999.9, Military and Veterans Code, Section 23101, Revenue and Taxation Code.~~

Section 1896.83 is readopted, with an entirely different title and amended existing content, repositioned:

§ 1896.83. Certification Denial Determination of Intent to Perform a Commercially Useful Function (CUF). [Repealed]

DVBE Certification will be denied, unless appealed in accordance with § 1896.95, when:

- (a) Applicants do not clearly meet the eligibility requirements for certification, or do not respond to requests from OSDS for additional information within the 30 calendar days specified in a written notice from OSDS.
- (b) The request for certification and supporting documents, in spite of information corrections and/or clarifications, may still not substantiate that eligibility requirements have been met.
- (c) Any request for certification is submitted by one or more principals of a business (new or existing) formed, financed by or affiliated with a business suspended from contracting with the state of California, or whose certification has been revoked.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 14839, 14840 and 14843, Government Code; and Sections 999.2 and 999.9, Military and Veterans Code.

Section 1896.84 is amended to read:

§ 1896.84. ~~Certified~~ ation Status by the OSDS.

- (a) Certified status is granted those business entities who have ~~The OSDS shall issue DVBE certification when applicants meet and complied with §§ 1896.804, 1896.812, and 1896.823 requirements. The small business certification includes a microbusiness designation. Dual certification means a DVBE also has a small business certification. Refer to § 1896.4 for the definition of a small business and a small business with a microbusiness designation.~~
- (b) DVBEs when ~~Qualified~~, DVBEs are issued the following certifications as follows:
 - (1) A DVBE certification, valid for 24 42 months.
 - (2) Dual certification, valid for 24 42 months. Dual certification means DVBEs also have small business certification. Refer to 2 CCR § 1896.4(t), for the definition of a small business designation.
 - (3) Dual certification, with microbusiness designation, valid for 24 months. Refer to 2 CCR § 1896.4(o), for the definition of a microbusiness designation.

- (4) ~~The~~ OSDS, at its discretion, may issue short-term or extended certifications, on a case-by-case basis. ~~In addition, this discretion includes issuance of certification extensions up to 12 months.~~
- (c) ~~The OSDS shall notify the business~~ shall be electronically notified in writing of its certification ~~decision and immediately indicate the status, length of certification, and inclusion in the certification database.~~
- (d) Recertification must be applied for, in the manner set forth in § 1896.80, prior to expiration of an existing certification. ~~The OSDS may certify businesses that have been certified by or on behalf of another governmental organization pursuant to Government Code § 14839.1.~~
- (1) Requests for recertification, electronic or paper, may not be submitted earlier than 90 calendar days before certifications expire.
- (2) Unless otherwise instructed by OSDS, the recertification request must contain updated information and/or replacement of obsolete content in order to demonstrate continued eligibility.
- (3) The qualifying DV shall declare in writing there are no changes in the service-connected disability as previously documented or, if there have been changes, provide the verification referenced in § 1896.82(b).
- (e) Whenever eligibility requirements are no longer met, DVBEs shall withdraw in writing from certification or OSDS will discontinue certification thirty (30) days after written notice. ~~The OSDS shall deny certifications when:~~
- (1) ~~The application and supporting documents do not meet the eligibility requirements.~~
- (2) ~~The business does not respond to a certification notice within 30 calendar days.~~
- (3) ~~Another governmental organization's certification does not meet Military and Veterans Code §§ 999.~~
- (4) ~~A new application is submitted by the principals of a business who are suspended from contracting with the State of California.~~

(f) In order to maintain certification when there are changes in ownership or business structure the following shall be required ~~In reviewing an application or the validity of a DVBE certification, the OSDS may do all of the following:~~

- (1) DVBES shall submit a new certification request identifying the new DV owners, DV managers and new business structure. Continued eligibility and the award of any new contracts require that OSDS first verify that all eligibility requirements are met by the business and the new owners; ~~Require additional documents and information that support eligibility. and~~
- (2) Similarly, any exchange of a DV owner with another DV owner while in the course of contract performance must be approved by the awarding department and OSDS prior to such change ~~Consider information previously submitted, provided or collected.~~

(g) In the event of a certification of permanent medical disability or death of qualifying DV owners, the business shall do the following:

- (1) Notify OSDS and awarding departments as soon as possible, not exceeding thirty (30) calendar days following the occurrence of permanent disability or death.
- (2) Submit a new certification request to OSDS in accordance with § 1896.80 within ninety (90) calendar days following the occurrence of permanent disability or death.
- (3) Submit documentation certifying the DV's permanent medical disability or death to OSDS along with the certification request. In addition, provide documents verifying who controls or has inherited the business. If permanent medical disability or death is confirmed, DVBE certification may continue, or recertification may be granted, for a period not to exceed three (3) years after the certified date of permanent medical disability, or death, if the business is inherited or controlled by the spouse or child of the majority owner, or by both of those persons.
- (4) Such businesses are deemed to continue as a DVBE pursuant to Military and Veterans Code § 999(b)(7)(B) solely for the purposes of:

(A) Fulfilling the requirements of a contract entered into, prior to the death or certification of permanent medical disability, for the duration of said contract, or:

(B) Providing sufficient time to make orderly and equitable arrangements for the disposition of the business, except that the business shall not enter into any new contract as a DVBE, if the contract cannot be completed within the allowable three year period.

(h) DVBEs shall maintain all licenses, insurance coverage, permits and registrations, including but not limited, to those issued by any California state department or local government jurisdiction required for the conduct of business. OSDS and the awarding department shall be noticed of any changes in licenses, permits, registrations, operation or ownership within thirty (30) calendar days.

(i) DVBEs must promptly notify OSDS in writing upon any change in the business address, contact information, or the DVs home address that may occur subsequent to obtaining certification.

Note: Authority cited: Sections 14600 and 14839, Government Code, and Sections 999.5, 999.5(a) and 999.6, Military and Veterans Code, and Sections 14837, 14839 and 14840, Government Code. Reference: Sections 14615.1, 14837 and 14838, Government Code, Section 999, Military and Veterans Code, and Section 14837, Government Code.

Section 1896.85 is readopted, with an entirely different title and new content:

§ 1896.85. Certification Discontinuance Appeal of Determination – DVBE. [Repealed]

(a) Certification may, for the purposes of this subchapter and Subchapter 3, Chapter 3, Division 2 of this Title, be discontinued for any of the following reasons, including but not limited to, a failure to:

(1) Provide requested information that supports its continued eligibility as a certified DVBE by the date and time specified by OSDS,

(2) Notify OSDS and the awarding department, in accordance with the provisions of §

999.2(h) of the Military and Veterans Code, that the requirements for certification have not been maintained.

- (3) Submit federal income returns as required by this subchapter and § 999.2(g) of the Military and Veterans Code.
 - (4) Maintain the required DV ownership and/or control level of 51 percent, or 100 percent in the case of Limited Liability Companies.
 - (5) Maintain active status with the California Secretary of State, when legally required to do so.
 - (6) Maintain all licenses, permits, insurance coverage and registrations integral to conducting business lawfully, including but not limited, to those issued by any California state department or local government.
 - (7) Conform to the statutory domicile in California or service-connected disability requirements on the part of qualifying DVs; or
 - (8) Upon evidence which would reasonably lead OSDs to determine that DVBEs no longer meet the eligibility requirements of this subchapter.
- (b) Discontinuance applies when, or for so long as:
- (1) Any of the (a)(1) through (8) subdivisions apply during certification, or
 - (2) Until satisfactory action on the part of the certified entity corrects applicable and specifically identified insufficiencies, whereupon certified status shall be restored for the remaining period of certification.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code, and Section 999.5, Military and Veterans Code. Reference: Sections 14839 and 14840, Government Code, Sections 999 and 999.2, Military and Veterans Code.

Section 1896.88 is amended to read:

§ 1896.88. Unlawful Certification and Contracting Activities.

- (a) In accordance with the provisions of Military and Veterans Code § 999.9(a) subdivision paragraphs (1) through (3), ~~Unlawful Certification:~~ it shall be unlawful for a person to ~~do any of the following, including but not limited to:~~
- (1) Knowingly and with intent to defraud, f~~Fraudulently obtain, or retain, attempt to obtain or retain, or aid another in fraudulently obtaining DVBE~~ certification.
 - (2) Willfully and knowingly m~~Make a false statement with the intent to defraud,~~ whether by affidavit or report, to a state official to influence a certification decision.
 - (3) Willfully and knowingly o~~Obstruct, impede,~~ or attempt to obstruct any state employee investigating the qualifications of an applicant requesting certification or of a certified business.
- (b) In accordance with the provisions of Military and Veterans Code § 999.9(a) subdivision paragraphs (4) through (10) ~~Unlawful Contracting Activities:~~ it shall be unlawful for a person to ~~do any of the following, including but not limited to:~~
- (1) Knowingly and with intent to defraud, f~~Fraudulently obtain, or attempt to obtain, or aid another in fraudulently obtaining or attempting to obtain~~ public monies, ~~or contracts or funds that are~~ awarded by the state, to which a person is not entitled.
 - (2) Knowingly and with intent to defraud, f~~Fraudulently represent DVBE participation in order to obtain or retain a bid preference or a state contract.~~
 - (3) Knowingly and with intent to defraud, f~~Fraudulently represent a CUF in order to obtain or retain a bid preference or a state contract.~~
 - (4) Willfully and knowingly m~~Make or subscribe to support any false statements or declarations as to any material matter relevant to this subchapter.~~
 - (5) Willfully and knowingly aid in the preparation or presentation of declarations, statements, or other documents that are fraudulent or false, regardless of whether or not the falsity is committed with the knowledge or consent of those authorized or required to submit the

~~declaration, statement or document in question fail to submit declarations or notices to awarding departments pursuant to Military and Veterans Code § 999.2 and § 1896.75.~~

(6) Willfully and knowingly fail to file with the awarding agency any declaration or notice required by Military and Veterans Code § 999.2 ~~Establish or aid in the establishment or control of a firm found to have violated Military and Veterans Code § 999.9(a)(1-9).~~

(7) Establish, or knowingly aid in the establishment of, or exercise control over, a firm found to have violated any of the requirements of Military and Veterans Code § 999.9(a) subdivision paragraphs (1) through (10).

Note: Authority cited: Sections 14600, ~~and 14615, and 14839~~ Government Code; and Sections 999.5, ~~999.5(f) and 999.6~~, Military and Veterans Code. Reference: Section 14840, Government Code; and Sections 999.2 and 999.9, Military and Veterans Code, and Section 14837, Government Code.

Article 4. Enforcement and Sanctions

Section 1896.90 is amended to read:

§ 1896.90. Enforcement.

The OSDS shall be responsible for actions against businesses for the enforcement of Military and Veterans Code §§ 999, et seq., Public Contract Code §§ 10115, et seq., and Government Code §§ 14842 and 14842.5. The actions are certification denial or ~~and~~ revocation and suspensions from contracting with the state as well as, the imposition of monetary penalties and/or cost recovery to the state, imposed in accordance with subdivisions (b), (c) or (d) for violation of subdivision (a) Military and Veterans Code § 999.9. ~~Information for appealing these actions can be found in Article 5.~~

(a) Certification Denial or Revocation: When a business does not meet the requirement for certification, or no longer meets eligibility requirements, because of a violation of subdivision (a) of Military and Veterans Code § 999.9, ~~the application or the~~ certification shall be denied or revoked. W~~h~~en denying or revoking an ~~application for~~ certification, the OSDS shall

provide a written notice. ~~The notice shall include~~ing the reasons for the denial or revocation. ~~The notice shall~~ and also provide information regarding the appeal process.

- (b) Suspension: Any business may be suspended from state contracting activities. Suspension means a temporary debarment from bidding on or participating as a contractor, subcontractor or supplier in any state contract or project, and includes a revocation of certification unless the suspended business is not certified. When suspending a certified business from contracting activities, the OSDS shall revoke the certification with ~~and provide~~ a written notice. The notice shall include affected businesses owned by, affiliated with, financed, or formed by the principals named in the suspension. ~~The notice shall include the reasons for the suspension and provide notice of the appeal process. Suspensions from contracting with the state; may include referrals~~ Any allegation with sufficient grounds may be referred to the Attorney General for possible prosecution and imposition of civil/criminal sanctions for violations of the Military and Veterans Code § 999.9(a). OSDS may pursue administrative action and penalties irrespective of whether the Attorney General chooses to bring action.

NOTE: Authority cited: Sections 14600, 14615, ~~14837(e), and 1484339(g)~~, Government Code; Sections 999.5 ~~and 999.9~~, Military and Veterans Code, ~~and Sections 10115.3(b) and 10295, Public Contract Code.~~ Reference: Sections 12651, 14837, 14840, 14842, ~~14842.5(a) and 14842.5(d)~~, Government Code; Section 999.9, Military and Veterans Code, and Sections 10115 ~~and- [nonbreaking hyphen to be deleted] 10115.105~~, Public Contract Code.

Section 1896.91 is amended to read:

§ 1896.91. Investigations and Reporting Requirements.

Nothing in these regulations shall be construed to impair the right of either the administering agency or the awarding department ~~or the OSDS~~ to initiate investigations pursuant to Government Code §§ 14842 or 14842.5, Public Contract Code §§ 10115, et seq., §§ 999, et seq. of the Military and Veterans Code, and Public Contract Code §§ 10115, et seq ~~Government~~

~~Code §§ 14842 or 14842.5.~~

- (a) The awarding department shall report ~~all allegations~~ of prohibited acts or activities or alleged violations of Military and Veterans Code §§ 999, et seq. or Public Contract Code §§ 10115 et seq. directly to the OSDS. Allegations of such violations received directly by OSDS from any other source are redirected to the awarding department by OSDS. In addition, with respect to such allegations, redirection by OSDS to the awarding department may be required for the purpose of gathering and assembling documentation and obtaining supporting evidence ~~The OSDS shall subsequently report alleged violations which have sufficient grounds to the Attorney General who will determine whether to bring a civil action against any person or business for the violations pursuant to Military and Veterans Code § 999.9(e).~~
- (b) ~~Prior to reporting an alleged violation of Military and Veterans Code §§ 999, et seq., or Public Contract Code §§ 10115 et seq., to the OSDS, the awarding department shall investigate the alleged violation and shall prepare~~ An accompanying written report, supporting evidence, and recommended action of their findings. ~~The written report shall also include a recommendation for action to be taken commensurate with the awarding department's findings. The results of the awarding department's findings shall be submitted in its entirety to the OSDS within 60 business days of notification or discovery of the alleged violation.~~
- (c) ~~The OSDS~~ Upon receiving a written request for additional time, OSDS may extend the subdivision (b) deadline for good cause. Nonetheless, OSDS will acknowledge receipt of the awarding department's investigative report within ~~three~~ 3 business days. ~~The OSDS will also evaluate the recommended action and may seek to revoke the certification. If the action will result in revoking the certification, the final OSDS notice may take up to six months.~~
- (d) ~~The OSDS direct allegations it receives to the awarding department for investigation. The process, requirements and timetables are the same as for those allegations identified~~

~~directly to the awarding department in § 1896.91(b). The Chief of the OSDS may grant an extension of the 60 business day requirement after receiving a written request and justification for the additional time. The extension may be granted at the sole discretion of the Chief. The awarding department shall provide a point of contact for the OSDS.~~

Note: Authority cited: Sections 14600, 14615, ~~14842.5(a) and 148432.5(d)~~, Government Code; Sections 999 and 999.5, Military and Veterans Code 10115.3(b) and 10295, Public Contract Code; and Sections 999, 999.5, 999.9, Military and Veterans Code. Reference: Sections 999.5 and 999.9, Military and Veterans Code, Sections 10115.2, 10115.3(b), and 10115.10; and 10295, Public Contract Code; Section 999.9, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ____ F.3d ____ (March 9, 1998).

Section 1896.92 is amended to read:

§ 1896.92. Sanctions.

The OSDS shall recommend, impose and enforce sanctions in accordance with the applicable provisions of the Small Business Procurement and Contract Act (Government Code §§ 14835 et seq.), and the Disabled Veterans Business Enterprise Program of (Military and Veterans Code §§ 999 et seq.) ~~Public Contract Code §§ 10115 et seq. Government Code §§ 12650-12656 specific to the False Clans Act, and sections 14842 or 14842.5.~~ The sanctions shall apply to the business be imposed against, and all principals and business affiliates and any person who violates the aforementioned laws, ~~the DVBE, and all principals and business affiliates.~~

Note: Authority cited: Sections 14600, 14615, ~~1483942.5(a) and 148432.5(d)~~, Government Code; ~~Sections 10115.3(b) and 10295, Public Contract Code; and Sections 999, 999.5 and 999.9, Military and Veterans Code.~~ Reference: Sections 12651, 14837, 14839, 14842, 14842, and 14843, Government Code; Sections 999, 999.5, 999.9 and 999.10, Military and Veterans Code; and Sections 10115.2, 10115.3(b) and 10115.150, Public Contract Code; and Section 999.9, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir.

1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

Article 5. Appeal Process

Section 1896.95 is amended to read:

§ 1896.95. Appeal of Certification Denial or Revocation, and/or Suspension from Contracting Activities.

Decisions to deny or revoke certifications, or to impose monetary penalties, sanctions, or and suspensions from contracting activities may be appealed. Upon receipt of an appeal, OSDS will determine jurisdiction. ~~Suspensions shall include a revocation unless the suspended business is not certified. An appeal must present arguments for concluding that establish the decision was in error. When an appellant provides new information that may change the certification decision, the appeal shall be withdrawn and a new application may be required.~~

(a) Denials, revocations, monetary penalties and suspensions or other sanctions shall become final unless an appeal is received within 30 calendar days from the date of the notice. The Director or designee may grant additional time for appeals submission when extenuating circumstances apply ~~prevent a timely appeal.~~

(b) The appeal shall be in writing, signed, dated and include a detailed written statement of the facts that support grounds for the appeal as subdivision ~~required in § 1896.95(c)~~ requires.

(c) Grounds for appeal shall be:

(1) ~~Denial:~~ The applicant met the requirements for certification and therefore should have been certified based upon the request for certification ~~application~~, supporting documents and records at the time of the decision.

(2) ~~Revocation:~~ The business ~~meets~~ the requirements for certification and therefore should remain certified based upon the certification file and records at the time of the decision. In the case of discontinuance, the restoration of certification occurs upon satisfactory submission of remediating documentation or information.

(3) Sanctions ~~The suspension~~ should not be imposed, because one or more of the conditions set forth in Military and Veterans Code 999.9 subdivisions (a), (c) or (d) or Government Code §§ 14840, 14842, 14842.5, as applicable, did de not exist to warrant the action.

(d) Appeals shall be withdrawn and a new request for certification may be required when an appellant provides new information that may change the certification decision or invalidates the determination being challenged on the basis of newly available information.

(e) There are no grounds for appeal in any of the following situations:

- (1) Frivolous appeal.
- (2) Failure to timely appeal a decision.
- (3) Failure to submit complete information by the specified date of a written request.
- (4) Submission of information after the decision.

(f) ~~The DGS Director or designee shall dismiss appeals based on § 1896.95(e) and notify the DVBE. The decision shall be final.~~

(g) ~~The OSDS DGS Director or designee shall forward appeals to the Office of Administrative Hearings pursuant to § 1896.95(c).~~

Note: Authority cited: ~~Sections 999, 999.5 and 999.9, Military and Veterans Code; and Sections 14600, 14615, 14837(e), and 14839(g), Government Code; Section 999.5, Military and Veterans Code.~~ Reference: ~~Section 999.9, Military and Veterans Code; Sections 12651, 14842 and 14842.5(a) and 14842.5(d), Government Code; and Sections 995.5 and 999.9, Military and Veterans Code; and Section 10115.150, Public Contract Code.~~

Section 1896.96 is amended to read:

§ 1896.96. Appeal Hearings.

Appeal hearings shall be conducted in accordance with the Administrative Procedure Act, Chapter 5, Part 1 of Division 3, Title 2, Government Code, commencing with § 11500, ~~except as~~

~~provided in this subchapter. Although a pre-hearing conference is encouraged, it shall be at the Administrative Law Judge's sole discretion. The Administrative Law Judges (ALJ), at their has sole discretion as to whether to conduct a hearing, or proceed with a decision based solely on the , shall hear orally and/or by written submission. If a hearing is held, the ALJ shall have discretion to limit the number of witnesses and the time allocated to each; and authority to permit or limit cross-examination; ~~and exclusive discretion to issue subpoenas and/or subpoena *duces tecum*. There shall be no right for the appellant to take depositions, issue interrogatories, and accept submission of non-party Amicus Briefs or subpoena persons or documents. However, the appellant may request information through the California Public Records Act.~~~~

Note: Authority cited: Sections ~~999, 999.5 and 999.9, Military and Veterans Code; and Sections 14600, 14615, and 14837, Government Code; and Section 999.5, Military and Veterans Code.~~

Reference: Sections 6250, 11500, 11501, 11502, 11503, 11504, 11504.5, 11505, 11506, 11507, 11507.3, 11507.5, 11507.6, 11507.7, 11508, 11509, 11511.5, 11511.7, 11512, 11513, 11514, 11515, 11516, 11517, 11518, 11518.5, 11519, 11520, 11521, 11523, 11524, 11526, 11527, 11528, and 14839, Government Code.

Section 1896.97 is amended to read:

§ 1896.97. Appeal Decisions.

The ALJ shall uphold or deny the appeal, and may impose sanctions, in accordance with Military and Veterans Code 999.9, subdivisions (b), (c) and (d).

~~(a) Denials: The ALJ shall grant or deny the appeal. If the ALJ grants the appeal, the OSDS shall certify the business pursuant to § 1896.84.~~

~~(b) Revocations: The ALJ shall grant or deny the appeal. If the ALJ grants the appeal, the OSDS will not revoke the certification. If the ALJ denies the appeal, the OSDS will revoke the certification. Prior to the ALJ's decision, the certification will remain valid through its expiration date.~~

~~(c) Suspensions or other sanctions: The ALJ shall grant or deny the appeal, and shall include the imposition of administrative sanctions pursuant to Military and Veterans Code § 999.9, Public Contract Code § 10115.10, Government Code §§ 14842 or 14842.5, and/or the False Claims Act as appropriate. If the Attorney General imposes fines and additional sanctions, the OSDS shall continue suspensions until all penalties, costs, and attorney fees are satisfied pursuant to Military and Veterans Code § 999.9-(c)(3). [Delete hyphen, Close space]~~

Note: Authority cited: Sections 14600, 14615, and 14839, Government Code; and Sections 999.5 and 999.5(d), Military and Veterans Code. Reference: Sections 11517, 14839 and 14842 Government Code; and Section 999.9, Military and Veterans Code, ~~Sections 11517, 14839 and 14841.5 Government Code.~~